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Montana Justice Quarterly

Winter/Spring 1987

A Publication of the Office of Attorney General

May 1987: Volume I, Number 4

Featuring:

Jay Wachtel
on Police Deception

J. Dennis Moreen
on Testifying in Court

Mark J. Murphy
on Prosecuting DUI

And more...

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MJQ

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From the Editor:

The Final Issue

Hard times have come to state and local government. Like most other state agencies, the Department of Justice has endured substantial cutbacks in nearly every phase of its operations. The **Montana Justice Quarterly** is a casualty of those hard times, simply because the Attorney General's office can no longer devote scarce staff resources to its publication. This issue will be **MJQ**'s final one, at least during the foreseeable future.

Bad times notwithstanding, investigators and prosecutors will want to read Arnold Melnikoff's straightforward explanation of the Controlled Substances Act, together with his brief rundown on the state Crime Laboratory's capabilities in drug analysis (**Scientific Investigations**, page 2). Mr. Melnikoff is the Chief of the Montana Criminal Investigation Laboratory Bureau.

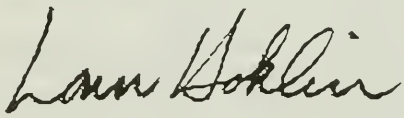
Assistant Attorney General J. Dennis Moreen offers helpful advice to the police officer who finds himself in the sometimes unenviable role of expert court witness in a major civil lawsuit (**Special Feature**, page 4). Mr. Moreen brings to this matter the benefit of his vast experience as Chief of the Agency Legal Services Bureau in the Attorney General's office.

Past contributor Jay Wachtel provides a thought-provoking look at the issue of honesty (and the lack of it) in police work, examining ethical concerns that no criminal justice professional should avoid (**Criminal Investigations**, page 6). Mr. Wachtel is a Special Agent with the U.S. Bureau of Alcohol, Tobacco and Firearms, and **MJQ** is grateful for his authoritative and well written contributions.

Within the past four years, the legislature has made sweeping changes in the law relating to drunk driving, and the Montana Supreme Court has taken a dramatic new turn in its approach to such offenses. Prosecutors will find Mark J. Murphy's article useful in coming to grips with those legislative and judicial changes, particularly as they relate to the Intoxilyzer 5000, the technology of choice in determining and prosecuting drunk-driving offenses (**For the Prosecution**, page 11). Mr. Murphy is a veteran prosecutor in the Attorney General's County Prosecutor Services Bureau.

In its final issue, **MJQ** has offered a new department, **Administration**, which should be a useful addition to the existing departments if the magazine is ever revived. This season's entry comes from the editorial staff, with able assistance in research and hands-on sense from Lieutenant Raymond L. Smith of the Montana Highway Patrol Division. The topic is fleet management, an increasingly complex matter for administrators of police agencies (**Administration**, page 14).

Someday, perhaps, **MJQ** will once again be a service that the Attorney General's office can provide to Montana's criminal justice community. It began as an effort to share professional knowledge and expertise, aiming to become a vehicle for unifying efforts and standardizing procedures among Montana's many criminal justice jurisdictions. The Attorney General's office hopes that **MJQ** has succeeded in some small way, despite its short life, and that the future will bring the resources needed to revive it. The editorial staff thanks those many people who contributed articles, suggestions and kind words.



Scientific Investigations

Controlled Substances and the Law

by Arnold Melnikoff

In 1972, Montana's legislature enacted the Controlled Substances Act, modeling it after the federal controlled substances statute. The new statute replaced the state's old laws concerning narcotics and dangerous drugs, reflecting the legislature's belief that the old laws had outlived their usefulness in the explosion of abused substances during the 1960's.

Before enactment of the Controlled Substances Act, the law classified cocaine, for example, as a narcotic drug, when in fact it is a stimulant derived from a naturally occurring substance. Hallucinogens like LSD, mescaline, marijuana and STP fell into a category that lacked any useful definition in the old Narcotic and Dangerous Drug Act. Such ambiguity in state and federal law caused due-process problems for the criminal justice system, prompting Congress to pass the federal Controlled Substances Act of 1971. The new federal law established specific categories for drugs: narcotics, stimulants, depressants and hallucinogens; it also set specific schedules that reflect the *abuse potential* of a drug (*Schedules I* through *V*). The act required a public listing by generic name of any drug covered within its enforcement provision.

The Montana Controlled Substances Act gave authority to the state Board of Pharmacists to designate, reschedule or delete any controlled substance within 30 days after it appeared in the Federal Register in accordance with the listing provisions of the federal act. But the Board must hold a public hearing before taking any such action concerning a specific drug or substance.

The new federal and state laws provided more accurate and useful definitions. *Narcotics* are now defined as any substances that are chemically related to morphine and are characterized by the addiction liability of morphine. *Stimulants* are any substances that have the potential for abuse associated with a stimulant effect on the central nervous system. *Depressant drugs* are those that have the potential for abuse associated with a depressant effect on the central nervous system. *Hallucinogens* are those with any known hallucinogenic effects.

The Montana Controlled Substances Act places each controlled substance into one of five schedules (*I* through *V*) according to the following criteria:

Schedule I. The drug has a high potential for abuse; it has no accepted medical use in the United States.

Schedule II. The drug has a currently accepted medical use in the United States, but it also has a high potential for abuse; it may cause severe physical or psychological dependence.

Schedule III. The drug has a currently accepted medical use in the United States, and has less potential for abuse than those covered in *I* and *II*; it can cause moderate or low physical and psychological dependence.

Schedule IV. The drug has a currently accepted medical use in the United States and a low potential for abuse when compared with drugs in *III*; it can cause limited physical or psychological dependence.

Schedule V. The drug has a currently accepted medical use in the United States and a low potential for abuse; it has a low potential for causing physical or psychological dependence when compared to drugs in *IV*.

Consideration of the following factors determines the schedule into which a drug is placed:

1. Actual potential for abuse.
2. Scientific evidence of its pharmacological effect.
3. Current scientific knowledge about the drug.
4. Known pattern of abuse of the drug.
5. The degree of abuse of the drug.
6. Risk to the general public.
7. Ability of the drug to cause physical or psychological dependence.
8. Whether the substance is an immediate precursor to another drug that is already controlled.

In order to avoid the legal consequences of the Controlled Substances Act, some enterprising chemists have synthesized drugs that have very similar chemical structures to those that are controlled, producing the same or similar pharmacological effects. These are the notorious "designer drugs." Any drug listed under the Controlled Substances Act must be *specifically* controlled, meaning that placement of a substance on the list does not authorize control of *similar* or *related* substances that are not on the list. Thus, an unethical chemist can theoretically stay ahead of the Controlled Substances Act by synthesizing a new related drug after the original drug is placed on the list. Congress is now considering S. 1437, a bill that would authorize federal drug enforcement officials to control

designer drugs as a group, rather than face the Sisyphean task of controlling each one separately.

The Montana Legislature has not yet enacted a statute that deals with designer drugs, though such action is probably in order. Law enforcement authorities recently seized a drug laboratory in southwestern Montana, in which a suspect was synthesizing "Ecstacy," an analog of a *Schedule I* controlled substance (The Montana Crime Laboratory indentified the designer drug as 3,4 methylene-dioxymethamphetamine, or MDMA, an analog of the *Schedule I* controlled substance 3,4 methylene dioxyamphetamine, or MDA). The state Crime Laboratory has seen similar examples as well.

One group of designer drugs has been a plague—the *fentanyls*. Known on the street as "China White" or synthetic heroin, fentanyl is a *Schedule II* controlled narcotic drug. Alpha methyl fentanyl was controlled as a *Schedule I* narcotic drug in 1981. The federal Drug Enforcement Administration placed *3*-alpha-methyl fentanyl in *Schedule I* in November of 1985. This drug is 500 times more powerful than heroin, and more than 40 addicts have died in the state of California from overdoses of fentanyl designer drugs.

"In order to avoid the legal consequences of the Controlled Substances Act, some enterprising chemists have synthesized drugs that have very similar chemical structures to those that are controlled."

The Montana Crime Laboratory uses a battery of analytical methods to test for the presence of the 160-plus controlled substances, using the following procedures:

Chemical spot tests. Some (but not all) controlled substances turn colors when specific chemical reagents are mixed with them.

Thin layer chromatography (TLC). Drugs are separated and identified by their location after they have been subjected to "migration" across a silica gelplate with a specific solvent. The drugs are then located on the plate by the colors they turn when subjected to reagents.

Gas chromatography (GC). Drugs migrate at different rates in a glass column coated with a specific absorbent and propelled by a carrier gas. The amount of time a particular drug takes to pass out of the column is called its *retention time*, and can be used to identify the drug.

Gas chromatography/mass spectroscopy (GC/MS). A mass spectrometer is used in tandem with a gas chromatograph in order to obtain a drug's *mass fragment pattern* along with its retention time. Nearly every drug's mass fragment pattern is unique, and those few drugs that have the same mass fragment patters have differing retention times on the GC. This analysis technique offers very high sensitivity and specificity, both of which are essential in the analysis of impure street drug samples that contain minute amounts of controlled substances.

Infrared spectroscopy (IR). Every substance is characterized by a unique infrared spectrum, meaning that this process can positively identify all controlled substances. The process measures a drug's *vibration pattern* when exposed to infrared energy. The drug to be analyzed, however, must be at least 90 percent pure, a major limitation that requires extensive chemical purification of street samples before IR testing can begin. Because it is much less sensitive than GC/MS analysis, IR testing requires a much larger sample of the drug.

The Montana Crime Laboratory tests more than 150 street samples of drugs per month, on the average. The most frequent drugs identified are marijuana and cocaine, meaning that Montana is a state where stimulants and hallucinogens are still mthe most common illicit drugs.

Mr. Melnikoff is Chief of the Laboratory of Criminalistics Bureau, Montana Division of Forensic Science, Department of Justice, in Missoula, Montana.

Special Feature

The Peace Officer as An Expert Witness

by J. Dennis Moreen

"People sue over anything these days."

We've all said something like that. Much has been made lately of the "overuse" of the court system. Even so, settling disputes without violence is a mark of an advanced culture, and in such a culture a peace officer spends less time "keeping the peace" than participating in the formal dispute resolution process (which is often only remotely related to criminal law). Disputes commonly involve automobile accidents, which are commonly investigated by peace officers, who commonly go to court in order to help resolve the disputes. This article provides to peace officers some hints on how to testify as an expert witness.

Suppose an officer investigates a minor traffic accident and issues a citation to the offending driver; the offender pays a fine, and the machinery of the criminal process switches off, having meted out justice. The police officer's involvement with the problem has ended, right?

But wait. A person who was thought at the time to be only slightly hurt turns out to be severely and permanently injured. He will need constant medical care for the rest of his life. This seemingly small criminal matter has become a major civil matter.

The dispute centers on the question of who is at fault, on who caused the accident. A leading character in this play is the investigating officer, even though he might prefer not to be in the cast at all. The fact is, the officer tried out for the part when he applied for his job.

The effort that an officer puts into investigating the accident and preparing his testimony will determine whether his court experience is a good one. This is not to say that he must spend excessive time and effort on small accidents. Rather, he should do a thorough job within the time allotted. If an officer's opinions on the matter are based on adequate investigation, they will stand up well under close examination. If his opinions are not based on fact, on the other hand, but on guesswork and assumption, they will not survive the test of the courtroom.

An officer may be called on to present the results of his investigation in any or all of the following settings: He may appear at an informal interview with an investigator or an attorney; he may testify at a deposition, where he provides sworn testimony which a court reporter records; or he may testify formally in court.

In any of these settings, the officer must be *prepared*, even though months or even *years* may have gone by since he last had anything to do with the case. To offer professional opinions about that case, he must refresh his memory by reviewing his notes and written report, devoting adequate time to that task. Common sense suggests that an officer cannot adequately prepare by spending five minutes in review of a case for which the accident-reconstruction process consumed several hours, especially if the accident happened many months earlier.

When providing testimony in court, an officer should keep several things in mind.

First, being a witness is not a test. Witnesses often assume that they are required to give answers to all the questions that the attorneys ask. When a witness does not know the answer to a question, his correct response is, "I don't know." Similarly, a witness should not try to answer a question that he does not understand. In this case, the correct response is, "I don't understand the question." Expert witnesses (such as traffic investigators) are sometimes victims of the "Answer-every-question" syndrome, just as laymen are. Remember that expertise in accident reconstruction, for example, does not automatically qualify a witness to answer questions about road design.

In a recent court case, an engineer who had expertise in the *structural* design and construction of bridges was asked whether a certain bridge was safe for bicycle traffic. Apparently thinking that the question related in a general way to his knowledge of engineering, he answered that the bridge was not safe. Yet, his knowledge was the *structure* of the bridge, not the flow of traffic that crossed it. His proper response to a request for his expert opinion about traffic flow would have been, "I don't know," or "I'm not qualified to answer that question."

An officer on the witness stand should *think* before answering any question. Pausing for a few seconds after the lawyer asks the question is a good way to force one's self to think. It's also a good way to avoid answering before the lawyer has finished asking, which is a sure sign that the witness has not considered his answer thoroughly. At first, the pause will seem unnaturally long to the witness, but the judges and the lawyers will think nothing of it.

"The effort that an officer puts into investigating the accident and preparing his testimony will determine whether his court experience is a good one."

Mr. Moreen is an Assistant State Attorney General, and Chief of the Agency Legal Services Bureau, Department of Justice.

The witness should answer only the question that the lawyer has asked, fully and honestly. Many witnesses attempt to anticipate the next question, which sometimes wastes time and causes confusion. Consider this simple example: *"Did you note the time?"* the lawyer asks.

The proper answer is, "Yes."—not, "2:35."

In everyday conversation the expected answer may indeed be "2:35." In court, however, the exact time may not be important to the case. If it *is* important, the next question will be, *"What time was it?"*

An officer will commonly hear testimony that is contrary to his own. Other witnesses, experts included, may view facts differently and reach different conclusions. Even so, an officer can do little more than communicate his conclusions and the basis for them. He cannot advocate for either side in the case. If his opinion changes, however, because of evidence that he did not have at the time he conducted his investigation, he should not hesitate to say so while on the stand.

The courtroom setting is often tinged with emotion. The lawyer whose case suffers because of expert testimony may examine the basis of that testimony very closely, sometimes in a hostile, attacking manner. The expert witness who is the subject of that attack should avoid responding with hostility, and should indeed try to avoid *feeling* hostile. While on the witness stand, the peace officer should bear in mind that he or she is a *professional* whose knowledge and expertise are important to the nonviolent resolution of an important dispute, and should project that professionalism. The effective witness demonstrates to the court and to the jury that he is above the posturing and bickering of lawyers.

Criminal Investigations

Lying

by Jay Wachtel

Editor's note: An earlier version of the first half of this article appeared in The Montana Law Enforcement Quarterly, a Great Falls magazine published briefly in 1983.

> There is no more right to deceive than there is a right to swindle, to cheat, or to pick pockets.
>
> Walter Lippman
> *The Public Philosophy*

"Minor deceits are an everyday part of police work."

While on patrol late one night, I saw an elderly gentleman, apparently out on a stroll. What caught my attention was his marked lack of progress, even with the aid of a cane. Ready to do a good deed, I adjusted my Stetson, stopped the squad car and approached the fellow.

"Good evening," I said, but the old-timer would have none of it. Glaring at me, he angrily raised his cane, then quickly set it down as his balance faltered. A strong smell of liquor hung in the air. Its source was an uncorked pint bottle in the man's hip pocket.

I backed off and watched as he tried to cross the street. Stumbling badly, he repeatedly failed to negotiate the curb—in his condition, the chasm probably seemed like the Grand Canyon. Clearly, it was wrong just to leave him there, but I was the only officer available for calls, so I couldn't spend a whole lot of time.

The guy wouldn't tell me who he was or where he lived, but the cop shop was only two blocks away. I asked if he wouldn't care to take a short break in a warm place. His reply was unprintable.

The solution was relatively straightforward: I offered to take the stranger wherever he was going. At this he brightened. He was on his way to meet some friends in a bar, and yes, thank you, he would appreciate a lift. Once we were on our way, I made a quick turn and pulled into the station—for just minute, mind you, "to check on the dispatcher." Another officer and I then persuaded my rider to wait inside where it was "more comfortable." Getting the fellow downstairs to the drunk tank took still more lies, but no one got whacked by a cane, and in the morning, a temporarily sober senior citizen thanked us profusely for our courtesy.

Minor deceits are an everyday part of police work. Without them, routine order-maintenance tasks, like the one described above, would often be difficult or extremely unpleasant. Most citizens are unsure of the law and are reluctant to tangle with the authorities, so they usually don't test us. Our lies, for the most part, go unchallenged, and we probably give little thought to them. Indeed, deception has become an integral part of that great bulk of police lore—"unwritten procedure" and "street sense" that help guide law enforcers through their most mundane tasks.

But let's not pick on the cops. If we consider the commonplace "white lies" that characterize everyday social life, the petty repair frauds and deceptive ads that make consumption worrisome and unpredictable, and the utterly corrupt "white-collar" schemes that defraud investors of their life savings, we must conclude that deception is a pervasive feature of contemporary life.

Deceit seems to be an integral part of commerce. Lying for the sake of profit is as American as apple pie.

In his essay, "Is Business Bluffing Ethical?", Alfred Carr suggests that it may be impossible to capitalize on business opportunities without recourse to deceptive practices:

> Most executives from time to time are almost compelled, in the interests of their companies or themselves, to practice some form of deception when negotiating with customers, dealers, labor unions, government officials, or even other departments of their companies. . . . If the individual executive [always] feels obligated to tell the truth [he] is at a heavy disadvantage in his business dealings.[1]

But why pick on businessmen? We could as easily besmirch the character of lawyers. Writing in *Denial of Justice: Criminal Process in the United States*[2], Lloyd Weinreb cites the following remarks of an attorney who, while delivering an address to his colleagues, answered each of the following questions in the affirmative:

1. Is it proper to cross-examine for the purpose of discrediting . . . an adverse witness whom you know to be telling the truth?
2. Is it proper to put a witness on the stand when you know he will commit perjury?
3. Is it proper to give your client legal advice when you have reason to believe that [it] will tempt him to commit perjury?

Interestingly, this lecturer went on to head the ethics committee of the District of Columbia Bar.

Casual attitudes toward truth disturbed the 18th–century philosopher, Immanuel Kant, who in a seminal volume on ethics proposed a rule that would make righteousness and truth-telling mandatory:

> *Act as if the maxim of thy action were to become by thy will a universal law of nature.*

Kant's beliefs never wavered. He was once confronted with the hypothetical dilemma in which a would–be murderer, finding himself in unfamiliar surroundings, asks for directions. Should a respondent who knows the stranger's purpose tell a lie, perhaps saving a life, or should he tell the truth, perhaps condemning someone to death? Kant replied that he would permit neither a false claim of ignorance nor a misleading response. As he saw it, people are obliged only to be honest; they are not responsible for the truth's consequences.

Kant's views were derided as unworkable by the "utilitarians," among them Jeremy Bentham (1748–1832) and his disciple, John Stuart Mill (1806–1873). Mill stated their principle the following way:

> Actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness . . . . The happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned.[4]

What we now call "situational ethics" has its basis in utilitarianism. Consider, for example, Mill's assertion that "breaking faith with people," though "basically unjust," is justified

> . . . by a stronger obligation of justice on the other side; or by such conduct on the part of the person concerned as is deemed to absolve us from our obligation to him, and to constitute a forfeiture of the benefit which he has been led to expect.[5]

It is clear that we live in an era of utilitarianism. Unfortunately, that principle may be seriously flawed. One glaring weakness is that decisions to deceive may be invariably self-serving. Even if objectivity reigns, the calculus of costs and benefits can be infinitely complex.

In *Lying: Moral Choice in Public and Private Life*, a contemporary philosopher, Sissela Bok, challenges the utilitarian assumption that "lies can be evaluated on a cost-benefit scale determined by the liar:"[6]

> The more complex the acts, the more difficult it becomes to produce convincing comparisons of their consequences. But to make such estimates for several persons is often well–nigh impossible.

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"But some fear that the cumulative impact of police lying inhibits public trust and confidence in law enforcement."

Aside from its impact on liars and dupes, deceit can affect the lives of unsuspecting and uninvolved others. Worse, deception's fuzzy nature can lead to consequences that are unpredictable, uncontrollable and socially dysfunctional.

But back to the kinds of deceit practiced by police.

We used his first name. We tried to con him. I said, "I can't scream through the door, and besides it's cold as hell out here and all your wife wants is her clothes." But he just tells me to do you-know-what and I'm sweating. "You can at least give her her clothes," I say to him. "We won't say a word to you, we won't even look . . . . Tell me what happened; you're a man. Did she try to put you down?" God, I'm talking to this guy, and the other cops are over by the stairs with their guns out. Finally—I can't say how long—I feel the lock give and the door open a crack and we go in and take him.

R. Sullivan
Police–Community Relations, 1970

As this example points out, it is probably wise to promise an angry, armed and barricaded husband that he will not be arrested if he will just open the door. Actually, false threats to arrest are more common. While police cannot lock up everyone who may become a problem, suggesting "a night in jail" usually calms and deters all but the most foolish or belligerent. In any case, such lies can help cops accomplish their main task, keeping the peace, in a somewhat safer fashion.

"Setting proper boundaries for police behavior requires that we decide not only what to do, but also what to refrain from doing."

Earlier, I suggested that deception is a common feature of everyday life. Indeed, when the *whole* of deceit is taken into account, relatively little of it seems attributable to police. But some fear that the cumulative impact of police lying inhibits public trust and confidence in law enforcement. A noted authority on police behavior, Peter Manning, has even warned that habitual deception by the police can lead to a deterioration of moral standards in general.[7]

Deception During Interrogation

Lies that help preserve the peace seem benign. Deception becomes more problematic, however, when its object is to secure evidence, which may occur during interrogations. Officers may exaggerate the severity of charges, for example, or falsely assert that material evidence has been discovered. The purpose may be to prompt someone to incriminate himself or testify against others.

A primary concern during interrogation is to avoid eliciting erroneous information—especially a false confession. As we know, a false confession can be the effect of physical or psychological coercion. The latter includes coercive lies. Example: a false promise of freedom in exchange for a signed confession.

Courts have sought to eliminate the incentive to coerce by voiding confessions made under duress, and by requiring that statements made during "custodial" interrogation be preceded by a knowing and intelligent waiver of rights. It is noteworthy that the definition of "custodial" may hinge, in part, on whether the police deceive a suspect during interrogation.[8]

Admittedly, deceptive interrogation can be a useful technique. There is always a deep irony, however, in using lies to reach truth. Deception during interrogation may cause unwarranted sympathy for a criminal defendant; it may also cast a shadow on the integrity and professionalism of an investigation. In a more practical sense, crude attempts at deceit may discourage suspects from cooperating with police.

Concealing Officer Identity

Whether the task at hand involves peace-keeping or investigation, there is seldom a need for a police officer to pose as something else. In fact, police work is usually facilitated by the authenticity of a uniform and badge.

On the other hand, situations do arise in which the mere suspicion on someone's part that he is involved with the police becomes a liability for the police. Consider the "Western Union" ruse, a timeworn detective's trick to spur a fugitive to open the door. Understandably, a fugitive who suspects handcuffs on the other side of the door will be reluctant to open it. He may open it for a telegram, however.

Undercover Work

Apprehending fugitives is one thing. Undercover work is another. Since the goal of undercover work is to secure evidence, officers must do more than merely achieve face-to-face contact with a suspect. They must lie about their identity and purpose in a manner that dupes targets for prolonged periods. Undercover work is thus the most extreme form of deception practiced by police.

Undercover work is a particularly effective way—in some cases the *only* way—to collect evidence of secretive and consensual crime. It yields powerful evidence, because it literally catches people "in the act of being themselves." For this reason, British and American police have used undercover techniques since the latter half of the 19th century. One early example, which occurred in the late 1800's, involved postal inspectors who posed as ordinary citizens and ordered pornographic literature through the mails. This led to the conviction of several persons. In two landmark cases, the judgments of guilt were affirmed by the United States Supreme Court.[9]

Since then, the Supreme Court has repeatedly ruled that undercover work does not constitute unlawful search and seizure. In *Hoffa v. United States*, the Court held that the Constitution does not protect individuals from the consequences of "misplaced confidence" in those to whom they confide.[10] The Court has also consistently rejected appeals based on alleged violations of the Due Process clause of the Fourteenth Amendment. In *Hampton v. United States*, for example, it affirmed the conviction of a defendant who unwittingly acquired drugs from an informant, then sold them to an agent.[11] And in *United States v. Russell* the Court ruled that proof of predisposition bars a claim of entrapment, even if the proferred inducements were so tempting that they might have caused a "noncriminal" to break the law.[12]

Critics have attacked undercover work on numerous grounds. Sissela Bok has warned that covert policing might make people unduly wary of each other, and thus "chill" human interaction.[13] Gary Marx, a well known authority on police undercover work, has also noted that undercover work can seriously abridge the right to privacy; that it may "amplify," or create crime; that it can cause basically honest citizens to break the law; and that it may lead to corruption and personality problems among officers.[14]

Controlling the Use of Deception

In *Policing a Free Society*, Herman Goldstein observed that to achieve a truly professional police, it is necessary to regulate the use of discretion.[15] Setting proper boundaries for police behavior requires that we decide not only what to do, but also what to refrain from doing. The courts have shown us that if we, as fledgling professionals, cannot accomplish this for ourselves, they will do it *for* us sooner or later.

In this article we have examined one of the most sensitive tools of the police work place, *deception*, in its most innocuous form (lying to keep the peace) and in its most controversial (undercover work). We have looked at the possible consequences of deception in its various forms. As modern utilitarians we should now weigh the costs and benefits of deception, opting, as would Bentham and Mill, for a course of action that yeilds the greatest "good" to all concerned. Here are a few starting points:

1. The routine use of deception should be discouraged. Minor deceits to keep the peace, however, or to enhance officer safety in arrest situations, should remain within the discretionary authority of field officers.

2. The use of deceit during interrogation should be controlled by agency policy. Claims of evidence when none exists seem particularly objectionable, especially when directed at a target whose prosecution will be sought.

3. The setting of undercover work should be strictly controlled. One possible course is to require that targets be selected on the basis of considerable criminal intelligence, and that measures are taken to avoid inducements that could motivate the non–predisposed. The issue of inducements is particularly relevant to "decoy" work, and to other tactics against targets who are not identified in advance. Strict controls are especially important when using informers rather than police officers.

This discussion has focused on deceptive interactions between the police and the community, but deception also takes place within the criminal justice system itself. Here the stakes of deception are even higher. No professional law enforcement officer would ever countenance lying in court, for doing so constitutes an unacceptable threat to the sanctity of the adjudicative process. A lie to a prosecutor or defense attorney has the same effect. A lie to one's peers breaks trust and confidence. A lie to one's superior is particularly harmful, because it interferes with the controls that the public demands in exchange for granting power and authority to the police.

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"No professional law enforcement officer would ever countenance lying in court...."

REFERENCES

[1]A. Z. Carr, "Is Business Bluffing Ethical?", ed. V. Barry, *Moral Issues in Business* (Belmont, California: Wadsworth Publishing, 1979).

[2]L. L. Weinreib, *Denial of Justice: Criminal Process in the United States* (New York: Free Press, 1977).

[3]Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals*, trans., T. K. Abbot (Indianapolis: Bobbs-Merrill, 1949), originally published in 1785.

[4]John Stuart Mill, *Utilitarianism, Liberty and Representative Government* (New York: E. P. Dutton, 1951).

[5]*Ibid.*

[6]Sissela Bok, *Lying: Moral Choice in Public and Private Life* (New York: Vintage Books, 1978).

[7]Peter Manning, "Police Lying," *Urban Life* (October 1974).

[8]*United States v. Dockey*, 718 F.2d. 850 (1983).

[9]*Grimm v. United States*, 15 S. Ct. 470 (1895) and *Andrews v. United States*, 16 S. Ct. 798 (1896).

[10]*Hoffa v. United States*, 385 U.S. 293 (1966).

[11]*Hampton v. United States*, 425 U.S. 484 (1966).

[12]*United States v. Russell*, 411 U.S. 423 (1973).

[13]Bok.

[14]Gary Marx, "The New Police Undercover Work," *Urban Life* vol. 8, no. 4, 1980).

[15]Herman Goldstein, *Policing a Free Society* (New York: Ballinger, 1977).

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For the Prosecution

Prosecuting the Drinking Driver

by Mark J. Murphy

The arrest and prosecution of the drinking driver have changed dramatically within the past three years. Montana's legislature enacted broad innovations and changes during the 48th and 49th sessions, and driving under the influence continues to be litigated and appealed more frequently than any other misdemeanor. This legislative and judicial pressure requires a continuing effort by the criminal justice practitioner to stay abreast of advances and changes in the law with respect to prosecuting driving-under-the-influence violations.

Legislative Changes

During its 1983 session, the legislature enacted four major pieces of legislation having to do with drinking drivers. One of these, the "per se" law (section 61–8–406, MCA), prohibits operation of a motor vehicle on streets and roads that are open to the public, if the driver's blood alcohol concentration is .10 or more. Punishment for violation appears in section 61–8–722, MCA, which does not require mandatory incarceration.

The per se law reduced the prosecution's burden of proof in alcohol-related driving offenses. In proving a violation, the state need not establish that the consumption of alcohol impaired the defendant's ability to operate the vehicle safely. Prosecutors use this new statute in situations where chemical tests of alcohol concentration are performed, showing concentrations of .10 or more, but where proof of impairment is lacking.

The 1983 legislature increased the penalties for driving under the influence, requiring mandatory jail time for convictions on first, second and third offenses. It also expanded the physical areas in which drunk driving laws can be enforced—from "public highways of the state" (the old language), to "all ways of the state open to the public." The new language includes any highway, road, alley, lane, parking area, and any other public or privately owned area that is commonly used by the public (section 61–8–101, MCA).

The legislature also passed a major revision of the "implied consent" law (section 61–8–402, MCA). If an arrested person refuses to allow chemical testing of his blood, breath or urine, the new law provides that his driver's license be seized by the arresting officer, and that he receive a 72-hour temporary driving permit. Refusal to take the chemical test, however, results in suspension of the driving privilege for 90 days with no issuance of a restricted probationary license after expiration of the temporary permit. If the same offender is arrested for the same offense within five years of the first refusal, and once again refuses to allow chemical tests, the offender loses his license for one year, with no chance of receiving a restricted probationary license. All suspensions and revocations imposed under the implied consent law are subject to district court review in accordance with section 61–8–403, MCA.

During the 1985 session, the legislature did not pass as many sweeping changes as it did in 1983. It did, however, enact a statute that created the offense of *negligent vehicular assault* (section 45–5–205, MCA). The law now says that a person commits a misdemeanor if he negligently operates a motor vehicle while under the influence of alcohol or drugs, and his conduct is the proximate cause of serious bodily injury to another. Also, during that same session, the legislature deleted the term "motor vehicle" from all alcohol-related statutes, and substituted "vehicle" for it. The definition of "vehicle" appears in section 61–1–103, MCA.

Technology

During the past three years, the technology used in determining and prosecuting driving under the influence has changed, just as the law itself has changed. The Intoxilyzer 5000, a breath alcohol testing device manufactured by Federal Signal Corporation, has become the standard method for breath-alcohol testing for drunk-driving prosecutions. The machine operates on a scientific principle that is different from the one previously used in Montana.

Whenever a new scientific principle is offered in evidence as the basis for a scientific opinion, the courts must examine the support behind the principle, as well the degree of its acceptance within the scientific community. The Intoxilyzer 5000 operates on the principle of infrared absorption, a principle that the Montana Supreme Court has not examined. Courts in other states have examined it, however, and have found it to be an acceptable method of determining the alcohol concentration of a person's breath.[1]

The main challenge to infrared absorption is that the

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process is not specific to *ethyl* alcohol, and that it may measure other chemicals such *methyl* alcohol and acetone. The Intoxilyzer 5000 has a separate system to measure acetone, however, and scientific experts say that an individual must be nearly brain-dead in order to have measurable quantities of methyl alcohol or other methyl-group chemicals on his breath.[2]

Some have challenged the Intoxilyzer 5000 with the question of whether infrared absorption is a chemical test. Courts in other states, however, has rejected this challenge as well.[3]

State v. Superior Court, 718 P.2d 171 (1986) provides an excellent example of the threshold foundational requirement of demonstrating that the Intoxilyzer 5000 has gained general acceptance within the scientific community. The second part of the foundational requirement is proof that the design of the machine employs the scientific principle correctly, precisely and accurately. The *Journal of Forensic Science* has published tests of the Intoxilyzer 5000 which seem favorable on this score.[4]

The third step is showing that the Intoxilyzer 5000 is operating accurately in a particular case. This is generally a matter of demonstrating that the machine in question has received certification by the state agency that has responsibility for such certification.[5] And the final part of the foundation is proof that the person who operated the Intoxilyzer 5000 did so correctly, and that he was a qualified operator who had state certification.

"During the past three years, the technology used in determining and prosecuting driving under the influence has changed, just as the law itself has changed."

An expert witness generally lays the foundation by presenting expert testimony that the scientific theory is accepted by the majority of scientists in that particular discipline. The witness is most often a qualified member of the state Division of Forensic Science. Of course, a court may require testimony from an independent expert, but the Montana Supreme Court has not done so.

The Division of Forensic Science also provides an explanation of how the Intoxilyzer 5000 operates, as a general rule. Once an individual judge has accepted the scientific theory and the reliability of the machine in a particular case, the same evidence need not be presented thereafter in every case in which that same judge presides. Review and acceptance of the Intoxilyzer 5000 in a given case by the Montana Supreme Court would mean that inferior courts would not require the same elaborate scientific foundation.

The foundation to be laid in each case must show that the machine was operating correctly, and that it was operated by a person who was appropriately certified at the time of the test. This foundation is most often laid by establishing that the machine itself has been certified, and that its *simulator blank* is within the manufacturer's guidelines. Because simulators can be temperamental, the testing procedure can sometimes pose difficulty. The simulator feeds a pre-measured test solution into the machine; if it incorrectly feeds the test solution, the Intoxilyzer 5000 may read the test solution correctly, but still render a reading that falls outside the manufacturer's guidelines. Independent testing of the Intoxilyzer 5000 may overcome this difficulty.

Litigation

Recent Montana Supreme Court decisions have dramatically altered enforcement of drunk-driving statutes. In *State v. Gee*, 43 St. Rptr. 1452, 723 P.2d 934 (1986), the Court seems to hold that a juvenile cannot be convicted of driving under the influence, but rather must be convicted of unlawful operation of a motor vehicle (section 61–12–601, MCA). The Court rejected the state's argument that this section of the law is simply a penalty section.

In *City of Helena v. Davis*, 43 St. Rptr. 1447, 723 P.2d 224 (1986), the Court eliminated use of the so-called "Cline" instruction. That instruction and its variation stated basically that intoxication to the slightest degree is sufficient to convict a person of driving under the influence. The Cline instruction is more than 20 years old, and the Court held that it no longer reflects the law in this state. The Court, however, does not give a directive for a possible replacement of the Cline instruction, a failure that will cause a proliferation of replacement instructions.

A startling change of position on a basic issue of state constitutional interpretation occurred in *State v. Johnson*, 43 St. Rptr. 1010, 719 P.2d 1248 (1986). In that case, the Court decided to interpret the Montana Constitution as granting new and different rights than those guaranteed by the United States Constitution, as interpreted by the United States Supreme Court. The Montana Court has used the doctrine of independent and adequate state grounds to establish many unique rights in the area of search and seizure. The *Johnson* case, however, is the first instance in which the state Court has set a new path in the area of Fifth Amendment rights. The

Court does not say clearly why this new path is necessary, or why it is good policy. The possibilities for litigation are endless.

Finally, in *State v. Swanson*, 43 St. Rptr. 1329, 722 P.2d 1155 (1986), the Court states that a defendant in a driving-under-the-influence case has a right to an independent chemical test, even if he refuses the chemical test offered by the officer, and the officer has a duty to safeguard the test sample in order to ensure effective testing.

REFERENCES

[1]*Dollar v. Arkansas*, 697 S.W.2d 93 (Arkansas, 1985); and *Dale v. Commissioner of Public Safety*, 384 N.W.2d 536 (Minn. App., 1986).

[2]Teresa Thompson, "Determining Blood Alcohol Concentrations: Two Methods of Analysis," *Montana Law Review* vol. 46, no. 2, pp. 365-379; and promotional material for the Intoxilyzer 5000, as well as the Operators Manual.

[3]*Dollar.*

[4]M. S. Goldberger and Vale H. Caplan, "Infrared Quantitative Evidential Breath-Alcohol Analyzers: In Vitro Accuracy and Precidion Studies," *Journal of Forensic Sciences* vol. 31, no. 1, pp. 16-19.

[5]Administrative Rules of Montana, 23.4.101 *et seq.*

"Recent Montana Supreme Court decisions have dramatically altered enforcement of drunk-driving statutes."

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Administration

How to Be A Good Fleet Manager

These days nearly all police organizations, both large and small, spend time and resources on fleet management, since most police organizations have fleets of at least two motor vehicles. But even small, one–car agencies have occasion to use the principles of fleet management, because the motor vehicle is a vitally important enforcement tool that represents a major share of that small agency's assets.

A police organization must buy the required vehicles for its fleet. Then it must care for those vehicles. It must distribute them to its officers. And finally, it must dispose of old vehicles and buy new ones.

The timely accomplishment of these tasks is the essence of fleet management. Stated simply, a fleet manager's job is to ensure that the fleet meets the needs of his or her organization, and that it delivers maximum mileage at minimal cost. Achieving these ends, however, is no simple matter. Successful fleet management requires skillful budgeting and smart buying. It requires distribution of vehicles to officers at the right times and places. It requires detailed record–keeping for auditing and future cost analysis, as well as effective inventory and control systems.

Acquiring Vehicles

A logical starting point for a discussion of fleet management is acquisition of new vehicles, which itself takes planning and research. Among the first considerations are the functional requirements to be placed on the new vehicles. For example, the Montana Highway Patrol's Fleet and Supply Bureau looks for cars that can handle the demands of long–distance patrolling over rural highways. On the other hand, the Billings Police Department needs cars that are suited to urban police work in densely populated neighborhoods. The two departments have different functional requirements, which is readily apparent in the differing body designs and equipment found on their respective cars.

Cost consideration is another major aspect of vehicle selection. The fleet manager should thoroughly research the price tags of competing vehicle types and brands, as well as the additional costs of equipment and accesseries to be installed on the new units. The goal is to project an *accurate* cumulative cost of the new vehicles well before making the final selection. Close and continuous communication among fleet managers and the agency's budget managers is critical to the process, since the acquisition depends on the amount of money available for buying new vehicles. A good working arrangement with the budget people can prevent cost overruns and other financial problems.

In order to ensure that the new vehicles will handle the demands that the organization places on them, the fleet manager drafts exact specifications that address each demand. Such specifications set forth requirements for engines, transmissions, seats and many other features that reflect the police agency's needs. Writing good specifications is a real challenge, owing to the emergence of new technologies, new laws and new regulations that influence the way police officers do their jobs. The fleet manager must stay abreast of the times by doing research into the ever-changing auto industry and the ever-changing law.

In drafting specifications the fleet manager should be precise, but he should avoid being so precise as to restrict bidding from likely suppliers and venders. Specifications that are too restrictive—in addition to being unfair to bidders—can nullify the cost-saving advantages of competitive bidding, and deny to venders the flexibility to provide economical alternative combinations of specified features.

Standardization should be high on the fleet manager's list of goals—in vehicles, equipment, accessories and parts. Standardization simplifies maintenance and storage; it allows easy interchange of vehicles and users, which reduces maintenance costs. A uniform inventory minimizes the need for specialized maintenance and repair services, and aids the process of determining the average fleet use of the items in the inventory. In short, a uniform inventory is usually a *smaller* inventory, which is cheaper than a big one.

Deciding which vehicles and equipment to buy is a heavy burden. The fleet manager can make that burden lighter by making use of research work and testing by others. Many private companies, associations and large police organizations throughout the nation publish their comparisons and tests of vehicles and equipment. The Michigan State Police, for example, conducts exhaustive annual tests of police vehicles, comparing performance, reliability and other factors. In publishing the results of that work, the Michigan State Police performs a valuable service to fleet managers everywhere, enabling them to make intelligent choices in writing specifications and buying.

When taking delivery of new vehicles, the fleet manager's team should inspect the cars thoroughly in order to verify that they meet the specifications. The inspection should include a check for damage in transit, and another check to verify

that dealer service has been performed satisfactorily. Remember: A problem unsolved at the time of delivery becomes a much larger problem later. Moreover, a police organization—like other buyers—is entitled to flawlessly functioning new cars.

After delivery, the next step is assignment of the new vehicles, a process that can have a great impact on morale within a police organization. Old and worn-out cars have a negative effect on morale, as any police chief or sheriff can attest, while new ones generally improve officers' enthusiasm and outlook. Most agencies find that morale is higher when cars are assigned to individuals or teams rather than to a "pool." When using a car from a pool, an officer can easily dismiss a mechanical problem or other deficiency with the assumption that someone else will fix it. When accepting an assigned car, on the other hand, the officer assumes responsibility for its maintenance and care. It becomes "his" car, a reflection on the officer himself, and perhaps even a source of personal pride.

"A good working arrangement with the budget people can prevent cost overruns and other financial problems."

Even so, the fleet manager should base assignments on the comparative need for replacement, and not on the individual desires of officers. By evaluating maintenance records, the fleet manager can determine which cars are most likely to generate major expenditures for repair and parts. These are the ones, of course, that are the best candidates for replacement.

Maintenance

Joe Alacchi, who is a technical consultant for the National Association of Fleet Administrators (NAFA), notes that even though driving a new car can be a real pleasure, proper break-in and careful driving are essential to effective preventive maintenance. And so are periodic preventive maintenance inspections and a weekly inspection by the driver. These measures can significantly increase the number of trouble-free miles for any new car.

All manufacturers provide basic warranties for the vehicles they sell, and many offer modified or extended warranties, depending on the uses to be made of the vehicles and the kind of wear anticipated on them. Fleet managers, to the maximum extent practicable, should allow car dealers to make good the warranties on the products they have sold, since these dealers' service teams usually know their own products better than anyone else. Also, service teams report weaknesses and deficiencies on warrantied vehicles to the manufacturer, whose designers can often "engineer out" those problems in future models. The fleet manager should be alert for problems on every vehicle still under warranty to ensure that the vehicle receives the needed dealer attention before the warranty expires.

A sound preventive maintenance program is the fleet manager's best ally in the cause of keeping cars serviceable and solving mechanical problems before they require major repair. Such a program also results in longer useful life for every vehicle, while minimizing costly "down time." The program relies on a *preventive maintenance schedule* that ensures timely servicing within the guidelines set by the manufacturer in the warranty. In designing the schedule, the fleet manager must consider the work requirements of the officers who use the cars, as well as other special factors that may be peculiar to any specific police organization. Weather, road conditions and distances to be driven within the jurisdiction are among those other factors that fleet managers must consider in designing preventive maintenance schedules.

An effective preventive maintenance schedule is not necessarily complex. Some automotive engineers suggest that a weekly five-minute driveway inspection is adequate, if a different system receives a checkup every week on a rotation basis. This method allows a vehicle to receive a thorough checkup about every month, and identifies small problems before they become big and costly.

Though the fleet manager should be aggressive in enforcing the preventive maintenance schedule, he or she should be alert against the officer who has a tendency to "overdo" maintenance. This officer typically attempts to shorten the intervals between maintenance sessions, or puts the vehicle into a service garage before determining the actual maintenance and repair needs. The fleet manager must educate supervisors within the organization about the costs inflicted by needless down time, and encourage them to keep tabs on the condition of the cars assigned to the officers under their supervision in order to minimize those costs. Every supervisor must understand that the costs associated with down time and maintenance diminish the resources that are available for combatting and preventing crime. This understanding should spur them not only to help enforce the preventive maintenance schedule, but also to prohibit needless maintenance.

In northern regions like Montana, fleet managers face special maintenance problems. Temperatures can exceed 100 degrees Fahrenheit in the summer, and plummet below –40 degrees Fahrenheit in the winter. The extreme summer heat results in deterioration of some automotive components, while the winter cold causes breakage of others. A preventive maintenance program should reflect careful consideration of the effects of extreme temperatures on the cars of the fleet, ensuring frequent inspection of those components that are likely to be damaged.

In addition to systematic preventive maintenance, the fleet manager should stress good driving habits as a way to minimize costs and maximize the service life of every vehicle. Good driving habits reduce service and repair costs, and increase the mileage obtained from fuel, tires and brakes. By promoting good driving habits within the organization, fleet managers and supervisors free up money and resources for allocation to the tasks of apprehending criminals and preventing crime. By the same token, poor driving habits decrease overall efficiency and create costs that detract from the ability of the organization to do its primary jobs.

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Keeping Records

Among the most vital of the fleet manager's tasks is accurate and comprehensive record-keeping. The maintenance and repair records of every vehicle are essential in determining the cost of the fleet to the organization, a major budget item for nearly every police department and sheriff's office. Past records allow cost comparisons that show the effectiveness of new measures and programs that relate to the fleet; they also allow comparisons of new products to old ones, as well as comparisons of product lines that the fleet has used, like tires and lubricants. Good records are indispensable in justifying acquisition of new cars to replace old ones. The fleet manager should maintain the records in a central location that allows easy access, not only for the purpose of reviewing the service history of a given vehicle, but also for gathering information about the entire fleet.

Stated in a general way, the fleet manager's records should be the indisputable source of information on the three "lives" of every vehicle that enters and leaves the fleet. One of these is the "service life," or simply the record of the time that the vehicle has spent in the fleet. Another is the "technological life," with which management can calculate *productivity ratios* (comparisons of technologies on a fleet vehicle with technologies on newer vehicles, in terms of their effects on the organization's productivity). The third is the "economic life" of the vehicle, which is simply a calculation of the total cost of acquiring and operating it.

Common sense dictates that every vehicle should have its own "identity," or a numerical designation that eliminates the possibility that one vehicle could ever be confused with another. Some agencies number their cars according to a specific location, such as the station where it will be based or the zone in which it will operate. Others number vehicles in a way that discloses the identity of its operator or the team that will use it. In any case, each car needs its own distinctive identification number, and the records of its "lives" should show where it was used and who used it.

Final Disposition

Getting rid of old fleet cars in order to make room for new ones is an important aspect of fleet management, one that is fraught with pitfalls. Nearly everyone has a strong opinion on how to make fleet changes, and there is no "surefire" method that will satisfy everyone.

Many law enforcement organizations use the trade-in method, by which a successful bidder deducts a negotiated amount from the total cost of each replacement vehicle in consideration of the value of the vehicles to be traded in. Many large agencies auction off their old cars, relying on the assumption that this method brings recaptures more value than a trade-in.

Other large departments sell their older but still serviceable cars to smaller government agencies, thereby maximizing the amount of money available to purchase new ones. Quite often, the appropriating bodies from which law enforcement agencies receive their funds—like legislatures or county commissions—impose requirements that dictate which disposition method must be used.

Regardless of which means of disposition an agency uses, the fleet manager must endeavor to stay "up to speed" on the value of every car in the fleet at any given time. This means using fleet records to determine the best time to trade in or auction off cars in the fleet, based on wear and tear, age and estimated value. It also means communicating with budget people—both inside the police agency and within the appropriating agency—about the realities of disposition, i.e., that the fleet does not obtain the greatest value from a car by "running its wheels off." In this age of scarce public resources, legislatures, city councils and county commissions are often reluctant to appropriate comparative large sums to buy new cars for police agencies, preferring to put off such costs as long as possible. Thus, a major part of the fleet manager's job is supply edcucational data to appropriating agencies, showing the most economical means of keeping serviceable police vehicles on the road.

"Fleet managers, to the maximum extent practicable, should allow car dealers to make good the warranties on the products they have sold, since these dealers' service teams usually know their own products better than anyone else."

Lieutenant Raymond L. Smith of the Montana Highway Patrol Division contributed research and experience as a fleet manager to this article.—Ed.

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